

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6144 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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KADARBHAI HAJI GAFAR & ANR.

Versus

THE COLLECTOR, BHAVNAGAR & ORS.

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Appearance:

Shri V.J. Desai, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 04/07/96

ORAL JUDGEMENT

The order passed by the Assistant Collector at Palitana on 9th November 1983 as affirmed in appeal by the order passed by the Collector of Bhavnagar (respondent No. 1 herein) on 30th April 1984 as further affirmed in revision by the order passed by the Secretary

(Appeals), Revenue Department (respondent No. 2 herein) on behalf of the State Government on 15th April 1985 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, the Assistant Collector at Palitana imposed penalty on the petitioners in the sum of Rs. 9613.60 ps. for breach of conditions found with respect to the order passed on 15th June 1981 under sec. 65 of the Bombay Land Revenue Code, 1879 (the Code for brief) with respect to one parcel of land bearing survey Nos. 771/5 and 772/4 in all admeasuring 5 acres 26 gunthas situated in Botad (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioners and one more brother of theirs were granted what is popularly known as the N.A. permission with respect to the disputed lands by the order passed by the Assistant Collector at Palitana on 15th June 1981 on certain terms and conditions. It appears that the permission holders did not regularly pay the N.A. assessment with respect to the disputed lands. Under one condition they were required to commence construction work within 6 months from the date of the order and to complete such construction work within 3 years therefrom. It appears that the petitioners could not complete the construction work within the stipulated time-limit. It appears that the petitioners used the disputed lands also for agricultural purposes. Thereupon a show-cause notice came to be issued on 6th July 1983 calling upon the petitioners to show cause why action for breach of conditions should not be taken against them. Its copy is at Annexure A to this petition. It appears that they filed their reply on 13th July 1983. Thereafter, by the order passed on 9th November 1983, the Assistant Collector at Palitana imposed penalty in the sum of Rs. 9613.60 ps. for breach of certain conditions attached to the order of grant. Its copy is at Annexure B to this petition. It appears that the present petitioners carried the matter in appeal before respondent No. 1 presumably under sec. 203 of the Code. By the order passed on 30th April 1984, respondent No. 1 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioners carried the matter in appeal/revision before respondent No. 2 presumably under sec. 211 of the Code. A copy of the memo of appeal/revision is at Annexure D to this petition. It was treated as a revisional application from the petitioners under sec. 211 of the Code. By the order passed by respondent No. 2 on 15th April 1985, he rejected it. Its copy is at Annexure E to this petition. The aggrieved petitioners have thereupon approached this

Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition as further affirmed in revision by the order at Annexure E to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary objection as to maintainability of this petition under art. 227 of the Constitution of India. At this stage learned Advocate Shri V.J. Desai for the petitioners orally applies for treating this petition also under art. 226 of the Constitution of India. Such oral application is accepted and this petition is ordered to be treated as also under art. 226 of the Constitution of India on payment of the deficit court-fees, if any, within a fortnight from today.

4. Learned Advocate Shri Desai appears to be right in his submission that no breach of conditions could be said to have been made by the land-holders by using some portion thereof for agricultural purposes. It has also been urged by learned Advocate Shri Desai for the petitioners that irregularity in payment of N.A. assessment would not be such a serious lapse as would warrant a very heavy penalty. It has also been urged that the time-limit for completion of the construction was 3 years and the show-cause notice at Annexure A to this petition was issued before expiry of the aforesaid period of 3 years. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has urged that, if the land is put to agricultural use after obtaining the N.A. assessment permission, it would amount to breach of the conditions in that regard. He has further urged that the petitioners were admittedly guilty of irregular payment of N.A. assessment and, since imposition of penalty being a discretionary matter, this Court need not interfere with the impugned orders. He has further submitted that the petitioners did not even commence construction work within a period of 6 months from the date of the order.

5. It transpires from the show-cause notice at Annexure A to this petition that the petitioners were not called upon to explain why they did not commence any construction activity in the disputed lands. In fact, in their reply, they did contend that some construction was raised in some portion of the disputed lands. If they were called upon to produce material for commencement of the construction activity in the disputed lands by making

it a ground in the show-cause notice at Annexure A to this petition, as rightly submitted by Shri Desai for the petitioners, they would have certainly brought on record the necessary materials in that regard. The conclusion regarding breach of conditions regarding commencement of the construction activity cannot therefore be sustained in law.

6. It is not in dispute that the time-limit for completion of the construction work was 3 years. It transpires from the material on record that the order granting the N.A. permission was passed on 15th June 1981. The show-cause notice was issued on 6th July 1983 nearly 2 years from the date of the order. The breach of condition is also referable to non-completion of the construction work within the stipulated time-limit. That ground mentioned in the show-cause notice can be said to have suffered from the vice of non-application of mind on the part of its author. When the time-limit for completion of the construction work was specified for 3 years, no show-cause notice for breach of that condition could have been issued on expiry of nearly 2 years. It is true that even till the date of the order at Annexure E to this petition the petitioners have not been able to complete the construction work. It however stands to reason that no party would undertake any construction activity in the wake of the proceedings initiated for breach of conditions. In that view of the matter, non-completion of the construction work even on the date of the order at Annexure E to this petition cannot be said to be a wilful breach of any conditions on the part of the petitioners.

7. It is not in dispute that the petitioners used at least some portion of the disputed lands for agricultural purposes. It cannot be gainsaid that ours is basically an agricultural country. A large percentage of population (nearly 70%) thrives on agriculture. It is the main source of livelihood for a large number of people. In that view of the matter, instead of allowing the disputed lands to remain fallow, the petitioners put them to agricultural use. By doing so, they have raised agricultural produce. Such action on their part could not be said to have been regarded as a wilful breach of the conditions to the N.A. permission. On the contrary, such an action on their part ought to have been commended rather than commented upon. This aspect of the matter does not appear to have occurred to any of the authorities below. To that extent the impugned orders can be said to be suffering from the vice of non-application of mind on the part of their respective

authors.

8. So far as irregularity in payment of N.A. assessment is concerned, it can be said to have been condoned as no action for its recovery as contemplated under the Code was ever taken. It cannot be gainsaid that the Code has provided for an adequate machinery for recovery of arrears of land revenue. It needs no telling that payment of N.A. assessment would be land revenue. If the petitioners were irregular in its payment, the concerned revenue authorities could have proceeded against the petitioners according to law under the Code. If they have not done so, a reasonable inference can be drawn that such irregularity in payment was condoned. In that view of the matter, no action for breach of condition on the basis of irregular payment of the N.A. assessment could have been taken.

9. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition as further affirmed in revision by the order at Annexure E to this petition cannot be sustained in law. It has to be quashed and set aside.

10. In the result, this petition is accepted. The order passed by the Assistant Collector at Palitana on 9th November 1983 at Annexure B to this petition as affirmed in appeal by the order passed by the Collector of Bhavnagar on 30th April 1984 at Annexure C to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 15th April 1985 at Annexure E to this petition is quashed and set aside. The fine if paid is ordered to be refunded. Rule is accordingly made absolute with no order as to costs.

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